

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JESSE DUHAMEL,

Plaintiff,

v.

STATE OF WASHINGTON, et al.,

Defendants.

CASE NO. 2:20-cv-00337-RSM-BAT

**ORDER GRANTING MOTION TO  
EXCLUDE DEFENDANTS'  
EXPERT VENKAT MOHAN**

Plaintiff Jesse Duhamel moves to exclude Defendants' proffered rebuttal expert Venkat Mohan, M.D. on the grounds that Defendants failed to produce Dr. Mohan's expert report pursuant to Federal Rule of Civil Procedure 26(a)(2). Defendants did not respond to the motion.

Having reviewed the parties' submissions and relevant record, the Court grants the motion.

BACKGROUND

Plaintiff, who suffers from chronic gastrointestinal bleeding, alleges that the Washington State Department of Corrections and its medical professionals failed to provide him with timely medical treatment. *See* Dkt. 1-2, 18.

On December 1, 2020, Defendants disclosed their Rule 26(a)(2) expert witnesses, expert Venkat Mohan, M.D. Defendants provided Dr. Mohan's curriculum vitae and rate sheet, but did not provide his expert report. Dkt. 23, Declaration of Darryl Parker ("Parker Dec."), ¶ 2;

ORDER GRANTING MOTION TO EXCLUDE  
DEFENDANTS' EXPERT VENKAT MOHAN

1 Defendants' Disclosure of Experts Pursuant to Fed. R. Civ. P. 26(a)(2) ("Defendants' Expert  
2 Disclosure"), Ex. A to Parker Dec.

3 The Court's May 26, 2020 Scheduling Order established the deadline for disclosure of  
4 rebuttal expert testimony under Rule 26(a)(2) as December 15, 2020. Dkt. 10. To date, Plaintiff  
5 has not received any reports from Dr. Mohan. Dkt. 23, Parker Dec., ¶3.

### 6 DISCUSSION

7 The disclosure of expert witnesses is governed by Federal Rule of Civil Procedure 26,  
8 which requires that parties must disclose any person who they may call as an expert witness  
9 during trial. Fed. R. Civ. P. 26(a)(2)(A). If the party specifically retained the witness to give  
10 expert testimony, the expert disclosure must include a report by the witness. *See* Fed. R. Civ. P.  
11 26(a)(2)(B). The report must include "a complete statement of all opinions to be expressed and  
12 the basis and reasons therefore; [and] the data or other information considered by the witness in  
13 forming the opinions[.]" *Id.* The court directs the timing and sequence of expert disclosures.  
14 Pursuant to the Court's Order of May 26, 2020 (Dkt. 10), that report was due on December 15,  
15 2020.

16 Federal Rule of Civil Procedure 37(c) sets forth the consequences for failing to "provide  
17 information or identify a witness as required by Rule 26(a)." Fed. R. Civ. P. 37(c)(1). Pursuant to  
18 Rule 37(c)(1), "the party is not allowed to use that information or witness to supply evidence on  
19 a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless."  
20 *Id.* The purpose of the "harmless" provision is "to avoid unduly harsh penalties in a variety of  
21 situations." Fed. R. Civ. P. 37 Advisory Committee Notes. The exclusion sanction is "self-  
22 executing" and "automatic." *Yeti by Molly Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106  
23 (9th Cir.2001) (referencing the Advisory Committee's Notes to Rule 37(c)(1) (1993

1 Amendments)). “Implicit in Rule 37(c)(1) is that the burden is on the party facing sanctions to  
2 prove harmlessness.” *Id.* at 1106–07. The Ninth Circuit “give[s] particularly wide latitude to the  
3 district court’s discretion to issue sanctions under Rule 37(c)(1).” *Id.*

4 Defendants filed no opposition to Plaintiff’s motion to exclude Dr. Mohan, so there is no  
5 basis from which the Court may conclude that the failure to disclose the report was harmless or  
6 that good cause exists for failing to comply with the Court’s scheduling order. In addition,  
7 discovery in this case is now closed and dispositive motions have been filed. Thus, Plaintiff will  
8 be prejudiced if Defendants are allowed, at this late stage to provide Dr. Mohan’s expert  
9 opinions.

10 Accordingly, it is **ORDERED** that Plaintiff’s motion to exclude Defendants’ expert  
11 Venkat Mohan (Dkt. 22) is **GRANTED**.

12 DATED this 19th day of April, 2021.

13  
14 

15 BRIAN A. TSUCHIDA  
16 Chief United States Magistrate Judge  
17  
18  
19  
20  
21  
22  
23